



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 220 OF 2010**

JOSEPH NDAVA NTHUKA.....1<sup>ST</sup> PLAINTIFF

RUTH KAMENE NDUVA.....2<sup>ND</sup> PLAINTIFF

VERSUS

RAPHAEL MUSILA MUTISO.....1<sup>ST</sup> DEFENDANT

MATHEW MUTISO.....2<sup>ND</sup> DEFENDANT

KALOKI MUSILA.....3<sup>RD</sup> DEFENDANT

NZIOKA MUSILA.....4<sup>TH</sup> DEFENDANT

**RULING**

1. In the Application dated 5<sup>th</sup> December, 2019, the Plaintiffs prayed for the following orders:

***a) That the Officer Commanding Station (O.C.S) Joska Police Station do enforce the Decree issued by this court on 12<sup>th</sup> November, 2019 by forcefully evicting the Defendants from parcel of land known as Mavoko Town Block 3/2729.***

***b) That the Defendants to pay the Plaintiffs the costs of the Application.***

2. The Application is supported by the Affidavit of the 1<sup>st</sup> Plaintiff who has deponed that this court delivered its Judgment in this matter on 22<sup>nd</sup> September, 2017; that in the Judgment, the court allowed for the eviction of the Defendants from the suit property and that in order to effectively enforce the Judgment, the OCS should be incorporated.

3. In reply, the 1<sup>st</sup> Defendant, on behalf of himself and the other Defendants, deponed that when Judgment was delivered in this suit, no notice was issued to them; that they applied for extension of time to lodge an Appeal to the Court of Appeal and that upon refusal by the single Judge to grant them leave to file an Appeal out of time, they requested to have the same heard before a full bench.

4. It is the Defendants' deposition that they have resided on the suit land since 2004 and are related by blood with the Plaintiffs; that if the order of eviction were to be enforced and their Appeal, whose process they have already began, is successful, they will be unable to redeem the land thus rendering them destitute and that the hearing of the Application dated 5<sup>th</sup> December, 2019 should await the hearing and determination of their Application dated 29<sup>th</sup> January, 2019. The parties filed brief submissions which I have considered.

5. In its Judgment dated 22<sup>nd</sup> September, 2017, this court ordered for the eviction of the Defendants from the parcel of land known as Mavoko Town Block 3/2729 (*the suit property*). There is no stay of execution of the said Judgment either by this court or the Court of Appeal. That being the case, the Defendants should vacate the suit property as ordered by the court.

6. For those reasons, I allow the Plaintiffs' Application dated 5<sup>th</sup> December, 2019 as follows:

***a) The Officer Commanding Station (O.C.S) Joska Police Station do enforce the Decree issued by this court on 12<sup>th</sup> November, 2019 by forcefully evicting the Defendants from parcel of land known as Mavoko Town Block 3/2729.***

***b) The Defendants to pay the Plaintiffs the costs of the Application.***

DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 4<sup>TH</sup> DAY OF JUNE, 2021.

O. A. ANGOTE

JUDGE